

**U.S. Department of Labor**

Office of Administrative Law Judges  
603 Pilot House Drive - Suite 300  
Newport News, VA 23606-1904

(757) 873-3099  
(757) 873-3634 (FAX)



**Issue date: 09May2001**

Case No.: 2001-ERA-0005

*In the Matter of*

LEDARIL MOSLEY, *Complainant*

v.

SOUTHERN NUCLEAR OPERATIONS CO., *Respondent*

Appearances:

William J. Atkins, Esq., for Complainant

John Richard Carrigan, Esq., for Respondent

Before:

RICHARD E. HUDDLESTON

Administrative Law Judge

**RECOMMENDED DECISION AND ORDER APPROVING SETTLEMENT**

This matter arises under the *Energy Reorganization Act of 1974*, as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992), and the implementing regulations at 29 C.F.R. Part 24. A formal hearing was scheduled for May 9, 2001 in Atlanta, Georgia.<sup>1</sup> By correspondence dated April 26, 2001 and May 3, 2001, Counsel for the parties have submitted executed copies of a settlement agreement resolving all outstanding claims against the Respondent, including a state workers' compensation claim. In consideration for approval of the settlement, Complainant requests that his appeal in this matter be withdrawn and the hearing canceled.

I note that the agreement contains a confidentiality provision. The Secretary of Labor has held with respect to confidentiality provisions in settlement agreements that the Freedom of Information Act, 5 U.S.C. §§552 (1988) (FOIA) "requires agencies to disclose requested documents **unless they are exempt from disclosure**..." *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, 96-TSC-5, ARB Case No. 96-141, Final Order Approving Settlement and Dismissing Complaint, June 24, 1996 slip op. at 2-3. See also *Plumlee v. Alyeska Pipeline Services Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10. Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6; *Davis v. Valley View Ferry Authority*,

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<sup>1</sup> The notice of hearing incorrectly identified this matter as Case No. 2000-ERA-0025. The correct case number is 2001-ERA-0005. All references by the parties to Case No. 2000-ERA-0025 are treated as references to case number 2001-ERA-0005.

Case No. 93-WPC-1, Sec. Final Order Approving Settlement and Dismissing Complaint, June 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to the FOIA); *Ratliff v. Airco Gases*, Case No. 93-STA-5, Sec. Final Order Approving Settlement and Dismissing Complaint with Prejudice, June 25, 1993, slip op. at 2 (same). The parties have requested that the terms of the Settlement Agreement be considered confidential commercial information under exemption 4 of the FOIA and treated accordingly. As no FOIA request has been made at this time, it is premature to determine whether any of the exemptions apply.<sup>2</sup>

Upon consideration I find that the terms of the agreement are a fair, adequate and reasonable settlement of the complaint. See, 42 U.S.C. §§5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dept. of Labor*, 885 F.2d 551, 5556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order March 23, 1989, slip op. at 1-2.

Accordingly, the agreement is hereby **APPROVED**. Complainant's appeal in this matter is withdrawn with prejudice, and the hearing is canceled.

A  
RICHARD E. HUDDLESTON  
Administrative Law Judge

**NOTICE:** This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §§ 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.7(d) and 24.8.

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<sup>2</sup> The settlement agreements have been sealed and identified as Pre-disclosure Notification Materials. In the event of a FOIA request, the Department of Labor is required to notify the submitters to permit them to file any objections to disclosure. See, 20 C.F.R. § 70.26 (1996).